

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
DTE ELECTRIC COMPANY)	
for accounting authority to defer costs associated)	Case No. U-18122
with its new Customer 360 Billing System.)	
_____)	

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On June 23, 2016, DTE Electric Company (DTE Electric) filed an application pursuant to 1939 PA 3, MCL 460.1 *et seq.*, the Michigan Administrative Procedures Act, MCL 24.201 *et seq.*, and the Commission's Rules of Practice and Procedure, Mich. Admin Code R. 792.10401, *et seq.* seeking approval for authority to defer certain additional project and capital costs associated with the implementation of its new customer relationship billing system, Customer 360.

The Commission previously issued an order on September 26, 2014, in Case No. U-17666 (September 26 order) authorizing DTE Electric to defer certain other project costs associated with the implementation of Customer 360, not to exceed \$47 million, as a regulatory asset in account 182.3, for amortization over a 15-year period, beginning the month following the in-service date. The September 26 order also authorized up to \$168 million in capital costs in accounts 391.1 and 303, for amortization over a 15-year period.

On June 23, 2016, DTE Electric filed an *ex parte* application seeking accounting authority to defer for future recovery an additional \$32 million for other project costs associated with post in-service or “go-live” refinements and stabilization, including increased training and staffing in order to minimize any degradation of service to the company’s customers. DTE Electric requested that the Commission grant authority to defer these additional other project costs to account 182.3, Other Regulatory Assets, and amortize to expense over a 15-year period, beginning after the post “go-live” transition is complete, but commencing no later than January 1, 2018. The company also is seeking accounting authority for additional capital costs of up to \$18 million to be charged to accounts 391.1 and 303, amortized over a 15-year period, beginning in the month of the system’s in-service date.

On July 22, 2016, the Commission issued an order indicating that *ex parte* approval of DTE Electric’s request was not appropriate and scheduled a prehearing conference before Administrative Law Judge Martin D. Snider (ALJ) on August 31, 2016. At the prehearing, the parties agreed to a schedule.

On August 25, 2016, DTE Electric filed direct testimony and exhibits. On September 14, 2016, the Commission Staff (Staff) filed direct testimony and an exhibit. On September 21, 2016, DTE Electric filed rebuttal testimony and on September 27, 2016, the parties appeared before the ALJ for an evidentiary hearing and cross-examination of the witnesses. Also at the evidentiary hearing, the testimony and exhibits of the witnesses were bound into the record.

On September 30, 2016, the parties filed a stipulated request for corrections to the transcript which was incorporated into the record and attached to the ALJ’s Proposal for Decision (PFD) that was issued on November 1, 2016.

On October 5, 2016, DTE Electric and the Staff filed initial briefs and on October 12, 2016, the parties filed reply briefs.

On November 9, 2016, the Staff filed exceptions stating that it continues to support its filed positions. On the same day, DTE Electric filed a letter stating they was not filing exceptions.

On November 16, 2016, both parties filed letters stating it would not be filing replies to exceptions.

The record in this case consists of 115 pages of transcript and five exhibits.

Positions of the Parties

DTE Electric witness Theresa M. Uzenski, Manager of Regulatory Accounting, testified regarding the company's proposed accounting treatment related to the requested increase in the amount of costs recorded for the Customer 360 project. 2 Tr 25. Ms. Uzenski testified that the additional \$18 million in capital costs and additional \$32 million in other costs were not identified until after the Commission issued its September 26 order. 2 Tr 26. Ms. Uzenski asserted that the amounts will be given the same accounting treatment as outlined in the September 26 order and that approval of these additional amounts is consistent with the September 26 order. 2 Tr 26.

DTE Electric witness Kenneth R. Bridge, Director of the Project Manager Office and Co-Delivery Lead for the Customer 360 Project, testified regarding the reasoning for deferral of an additional \$32 million in costs associated with the Customer 360 project and an incremental \$18 million in capital costs. 2 Tr 92. Mr. Bridge testified that the additional \$32 million in costs are primarily due to a temporary increase in staffing after the Customer 360 system goes live, increased training, and increased IT support, and the additional \$18 million is related to additional work on system updates and programming changes. 2 Tr 94. He testified that the company estimates it will take three to eight months after the system goes live for employees to learn to use the new system efficiently and until

that time, more staff will be needed to handle customer service call volume as efficiently as it is handled now. 2 Tr 94-95. Mr. Bridges reiterated that the company is not requesting recovery of the additional costs in this case. They are requesting approval for accounting treatment and will seek recovery in future rate case applications. 2 Tr 98.

The Staff presented the testimony of Brian Welke, an auditor in the Revenue Requirements section of the Commission's Financial Analysis and Audit Division. Mr. Welke testified that the Staff does not support DTE Electric's application because these costs are more appropriately addressed in rate cases. 2 Tr 15. Mr. Welke points out that despite DTE Electric projecting costs for the 25-month period July 1, 2015 through July 31, 2017, including a substantial investment in Customer 360, in two rate case filings, DTE Electric still segregated other Customer 360 costs from those proceedings to be the subject of Case No. U-17666 and the instant case. 2 Tr 15. The Staff argued that DTE Electric's application does not include any reasoning as to why it needs special accounting authority for these costs outside of the current regulatory framework. *Id.* The Staff also argued that approval of this application may encourage utilities to keep other routine costs out of rate cases and attempt to obtain recovery through future regulatory asset requests such as this one and avoid the Staff's opportunity to perform a prudence review of the costs. 2 Tr 16.

In rebuttal testimony, DTE Electric witness Uzenski stated that the Staff's assertion that the Customer 360 costs should be addressed in a rate case is inconsistent with the accounting treatment approved and ordered by the Commission in Case No. U-17666. Ms. Uzenski also stated that a portion of the costs being considered in the instant case fall outside of the test year for the pending rate case and that the amount of the projected costs included in that case has changed since the application in that case was filed on February 1, 2016. 2 Tr 28. Ms. Uzenski testified that the Staff's argument regarding the lack of reasoning for requesting the accounting authority is inaccurate. DTE Electric

argued that this case is simply an update to the amount requested in Case No. U-17666 and because DTE Electric's explanation for the need for this accounting authority was approved in that case, the explanation need not be repeated in this case. *Id.* Ms. Uzenski also testified that the Staff's arguments that the costs in this case are routine and will not cause financial harm should be rejected because these costs are associated with a unique project and the additional expense of \$32 million would materially reduce 2017 net operating income. *Id.* Ms. Uzenski also responded to the Staff's assertion that management can independently decide to record a regulatory asset by calling it misleading because, according to Ms. Uzenski, management does not have proper evidence to support regulatory asset treatment in this particular instance. *Id.*

Proposal for Decision

In the PFD, the ALJ first reviewed the Commission's September 26 order and the application before the Commission in this case. The ALJ then turned to the dispute over the standard of review for the application and the appropriate type of case in which accounting authority requests, such as the one in the instant case, should be decided.

The ALJ stated that DTE Electric used the Uniform System of Accounts (USOA) and the Financial Accounting Standards Board's Generally Accepted Accounting Principles (GAAP) to make its decision in treating Customer 360 costs as a regulatory asset and request Commission approval to use account 182.3. PFD, p. 30. DTE Electric argued this is a management decision that can be requested outside the context of a general rate case proceeding. DTE Electric also argued that the standard of review for the costs is not whether recovery was probable, but whether the "nature of the costs are such that they may be given the accounting treatment requested." PFD, p. 32. The Staff interpreted the approval process for use of account 182.3 differently and argued that a two-pronged factor analysis must be used. PFD, p. 33. The Staff argued that the

Commission must first decide that the application for accounting authority is a ratemaking action and then determine that the recovery of the costs in question is probable. PFD, pp. 30-31. The ALJ found that neither party made a conclusive argument as to whether DTE Electric's application is a ratemaking action. Therefore, the ALJ found that there was no need to address the question of whether the application was a ratemaking action, the first factor in the Staff's proposed two-part analysis.

The ALJ then addressed the Staff's argument that an application for accounting authority to use account 182.3 may only be brought in a rate case. The Staff relies on a February 3, 2009 Commission order in Case No. U-15751 (February 3 order) as its authority. The order stated that interim surcharges or the creation of a regulatory asset as "extraordinary measures." February 3 order, p. 4. The ALJ differentiated the request in Case No. U-15751 from the instant case because the request in Case No. U-15751 could have potentially impacted customer rates and therefore was, in essence, a request for ratemaking. PFD, p. 35. The ALJ stated that the Staff's interpretation of the February 3 order did not consider the context within which the Commission was making its decision. PFD, p. 35. The ALJ also pointed out that the February 3 order does not state that the Commission lacks authority to consider the relief requested outside a general rate case. PFD, p. 36. The ALJ explained that it is the Commission's option to make these types of decisions in a rate case or in a separate application for accounting authority case. February 3 order, p. 4. The ALJ continued his analysis and differentiation of the cases by looking at the timing involved in both cases. In Case No. U-15751, the timing was such that the Commission could include the request in a pending rate case. In the instant case, the DTE Board of Directors did not approve the additional Customer 360 costs until a few weeks before the close of the evidentiary record in the currently pending rate case. DTE Electric argued that the Board's timing

of the approval made it impossible, contrary to the Staff's suggestion, to include the costs in the rate case and therefore, the instant application was appropriate. PFD, pp. 36-37. The ALJ agreed with DTE Electric that because the additional Customer 360 expenses were not approved until shortly before the close of the evidentiary record in the pending rate case and because a portion of the costs are outside the test year in the rate case, including these costs in the rate case was not possible. PFD, p. 37. The ALJ also considered and rejected the Staff's contention that the order in Case No. U-17666 and Mich Admin Code, R 460.9002(1)(e) require that DTE Electric file the accounting authority request such as the one before the Commission in the instant case in a general rate case. PFD, pp. 37-30. The ALJ found that there is no statute, rule, or Commission order that requires DTE Electric to seek approval to use account 182.3 in a rate case. PFD, p. 40.

The ALJ then turned to the Staff's contention that to receive the requested accounting authority, DTE Electric must establish that it is probable the costs in question will be recoverable in a future ratemaking action. The Staff argued that DTE Electric did not provide evidence that recovery of these costs was probable. The ALJ opined that if the Staff's argument is accepted, it puts DTE Electric in a difficult position as showing the additional Customer 360 costs are probable is virtually impossible without a Commission order. PFD, pp. 43-44. The ALJ stated that in this case, the Staff's two-factor analysis "transforms a management accounting decision, subject to Commission approval, into a legal standard of review." PFD, p. 44. The ALJ found that the Staff's proposed "probable" standard of review, as defined in USOA's accounting standards, should not be used in this case.

The Staff's next argument is that DTE Electric should have used a different account, account 186, for the additional Customer 360 costs and thus avoiding the need for Commission approval. DTE Electric maintained throughout the proceeding that the request is simply an addition to the

request in Case No. U-17666. The ALJ rejected the Staff's argument by stating that the Commission approved DTE Electric's request to use account 182.3 for Customer 360 costs and did not suggest DTE Electric use account 186. PFD, p. 44.

The Staff argued that Commission approval of the application in this matter would give implicit assurance that the additional Customer 360 costs would be recoverable in the future. Staff's reply brief, p. 2. The ALJ looked to the language in the September 26 order and found no language that suggests future recovery of Customer 360 costs is not assured. He rejected this argument and stated that all Customer 360 costs included in a rate case are subject to a prudence review by the Staff. PFD, p. 45.

The last issue the ALJ addressed was whether Commission denial of the application would cause DTE Electric financial harm. The Staff contended that DTE Electric provided no evidence to show they would experience financial harm if the requested accounting authority was not approved. DTE Electric countered that if the Commission denies its request, the company will expense the costs as they are incurred which will, in turn, reduce operating income. The ALJ found that neither the USOA nor the GAAP accounting standards for account 182.3 contain a financial harm factor. He agreed that if the application is denied, DTE Electric's operating income will be impacted if the Customer 360 costs are expensed as they are incurred. PFD, pp. 46-47.

The ALJ also cautioned that the Staff's proposed use of the two-factor test in this case arguably takes a management accounting decision that is subject to Commission approval and makes it into a legal standard of review that could be interpreted to exceed the Commission's authority. PFD, p. 47.

In conclusion, the ALJ recommended that the Commission find that DTE Electric is not precluded by any statute, rule, or Commission order from filing its application for accounting

authority to use account 182.3 outside a general rate case, that the accounting “probable” standard should not be used as the sole standard of review in this case, that Commission approval in this matter does not include assurance that the costs in this case will be recovered in a future rate case, and that DTE Electric’s application be approved.

When the ALJ issued his PFD, he provided the parties with an opportunity to file exceptions on or before November 9, 2016, and, if necessary, replies to exceptions on or before November 16, 2016. On November 9, 2016, the Staff filed brief exceptions stating that although the PFD did not adopt the Staff’s recommendations, the Staff continues to support its position as presented in testimony and briefing.

Discussion

The decision to approve or deny an application for accounting authority to create a regulatory asset is solely in the discretion of the Commission. The Commission is not bound by the proposed decisions of the ALJ and has the authority to perform an independent review of the record. In this case, the Commission has reviewed the PFD and the parties’ positions and finds itself in agreement with some of the ALJ’s conclusions while disagreeing with others. For the reasons outlined below, the Commission has decided that DTE Electric’s application should be denied.

The Commission agrees with the ALJ that there is no statute, rule, or Commission order precluding DTE Electric from filing an application for accounting authority outside of a general rate case. And, as acknowledged by the ALJ, the Commission recognizes that in the past, the Commission has granted *ex parte* approval of requests for accounting authority outside of a general rate case. However, the Commission agrees with the Staff that in those cases, only accounting treatment, not ratemaking treatment, was approved on an *ex parte* basis. Staff’s brief, p. 2. The Commission reminds all parties that although a company is not precluded from filing an application, the

Commission is not bound to approve the application, especially on an *ex parte* basis, and prefers to do a thorough review of applications and supporting testimony and evidence before making a determination.

The Commission agrees with the ALJ that the Staff presented valid concerns regarding the Commission's consideration of the expenses included in this application outside of a general rate case. PFD, p. 40. The Commission finds the Staff's argument persuasive that in the instant case, a rate case would be a better avenue to consider and review the additional Customer 360 costs at issue. Staff's brief, p. 1. This Commission desires to reinforce the principle that creating a regulatory asset is an "extraordinary measure" as described on page 4 of the February 3, 2009 order in Case No. U-15751 and is opting for the "rate case approach" as described on the same page of that order to be used for the additional Customer 360 costs at issue in this case. The Commission agrees with the Staff that the portion of the costs that fall within the projected test year for the pending rate case should have been included in the rate case. The costs that fall outside the test year can be included in the company's next general rate case. By including the costs in a rate case, the Staff will be able to perform a prudence review to determine if the costs should be recovered.

The Commission also agrees with the ALJ's finding that Commission approval of this application does not include assurance the Customer 360 costs will be recovered in a future rate case. PFD, p. 48. In Case No. U-17666, DTE Electric requested, and was granted, approval to create a regulatory asset for certain Customer 360 costs. The Commission limited the amounts approved for both capital and operational expenses. While the Commission did not bar the company from making another accounting request in the future, it did not give any indication that the accounting approval was open-ended for any additional costs associated with this particular IT project. In that case, the Commission was led to believe that DTE Electric's projection of costs was accurate and complete as could be

expected. In February 2016, DTE Electric filed a general rate case, including a request to recover in rates Customer 360 costs through the project's post go-live phase based on a test year through July 31, 2017. No updated expense projections were included in that filing. Shortly before the close of the evidentiary record, DTE Electric filed the application in the instant case claiming to have only recently learned of the additional approximately \$50 million in costs. The Commission is concerned about the veracity regarding the timing of this discovery and about how well the company is able to project and monitor costs of the Customer 360 project in a more timely manner. 2 Tr 15, PFD, pp. 39-40. The Commission also agrees with the Staff that providing the requested approval for the additional, more newly discovered projected costs removes the incentive for the utility to manage costs during this critical juncture in the project. Staff's brief, pp. 17-18.

THEREFORE, IT IS ORDERED that DTE Electric Company's requested accounting authority to defer costs associated with its Customer 360 Billing System is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of January 12, 2017.

Kavita Kale, Executive Secretary